

June 20, 2011

Marlene H. Dortch
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WT Docket No. 11-65 (AT&T/T-Mobile Transaction)

Dear Ms. Dortch:

In their PETITION TO DENY, Free Press, Leap Wireless and Cricket Communications asserted that the proposed merger would result in a “duopoly,” or worse, harming competition. However, a review of market concentration in the dynamic telecommunications environment reveals that cries of “duopoly” are predicated more on ideology and not a fair review of the market as it exists today.

As Free Press claims, the Hirschman-Herfindahl Index, an important barometer for determining market concentration, will likely increase if this merger is successful. However, the Index measure won’t even be half as large as the recorded high of close to 8,000 in the 1970s. We believe any claims of “duopoly” must be placed in the proper historical and technological context.

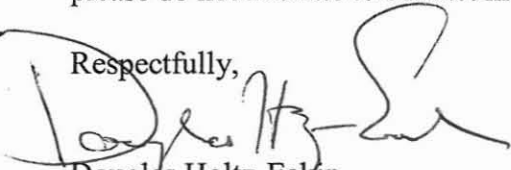
Today’s communications market is fundamentally different than the 70s-era Ma Bell environment. Tens of millions of Americans routinely use Wi-Fi to communicate through WiMax, VOIP, Skype, and Google Voice, among others. Just as television and print journalism can no longer be judged without reference to Internet competition, neither can today’s telecommunications market.

If this merger is approved, consumers will still have a vast array of communications options, and many can use these services for free, or participate in a market that is experiencing price declines, not increases. For example, Free Press, Leap, and Cricket go to great lengths to demonstrate that the “Top 2 Firm Share” has steadily increased since 2003. Yet the facts simply do not support their claim that “prices will likely rise” and “less competition” will result.

In fact, prices per minute have dropped more than 88 percent since the advent of modern wireless communication and per megabyte costs are expected to fall 2,100 percent during the next three years. If the wireless market is growing less competitive, then why is this perceived concentration of power resulting in lower prices, massive increases in broadband usage, and a stunning array of mobile platforms? The answer is that competition in the wireless market is incredibly healthy.

Thank you for taking the time to review my comments. I have included a recent op-ed that summarizes my views on market competition. If I can be of any further assistance in this matter, please do not hesitate to contact me directly.

Respectfully,



Douglas Holtz-Eakin
President
American Action Forum

Enclosure

Sam Batkins
Doug Holtz-Eakin
June 20, 2011

Telcom Merger: Rhetoric versus Reason

“Monopoly ... duopoly ... reckless consolidation.” This is just a sampling of the inflamed rhetoric that pervades the public discussion and official comment to federal agencies regarding the proposed merger of AT&T and T-Mobile. But rhetoric goes only so far. Thankfully, consumers will benefit most when this merger is judged by the merits: competition, access, and the quality of the most vibrant wireless market in the world.

One threat to an even-handed assessment of the economics is that some feel compelled to view the merger through the lens of anachronistic thinking dating to a previous generation. Yes, Ma Bell was a potent monopoly 40 years ago. But put simply, Ma Bell dominating the wireline market is hardly relevant in a 21st Century telecommunications environment.

To see this, adopt for a moment the intellectual blinders of 1970 and focus on the empirical analysis that will determine what's best for consumers. The Department of Justice's “Horizontal Merger Guidelines” lays out a formula (Hirschman-Herfindahl Index) for determining the state of competition and whether a monopoly exists. In using this index, for example, a value of 10,000 denotes a complete monopoly, while a value of zero indicates infinite competition.

Nobody ever expects to see a 10,000, but one reason that comparisons to 1970s-era Ma Bell are inapt is that at that time the HH index was almost 8,000 (one of many reasons it was eventually split up by regulators). This merger, if successful, wouldn't result in an index value even half as high as Ma Bell's, especially when taking into account the varied Internet and local options for communications.

Any cry of “duopoly” largely ignores the tech boom of the last fifteen years. Today's vibrant communications world is a place where prices per minute have dropped 88 percent since 1996, and per megabyte costs are expected to fall from \$0.42 to just \$0.02 in the next three years. That's because the nature of competition is not just AT&T versus Verizon and Sprint, but mobile voice versus mobile data; national carriers versus regional carriers; and metropolitan areas versus rural communities. Today, a majority of Americans already have at least five facilities-based providers, and claims of a single company dominating the market when any consumer can use a Wi-Fi connection to make a free call are simply unfounded.

Thus, the proposed \$39 billion deal is far more complicated than the rhetorical echo chamber of television and the blogosphere would like to believe. Today's telecommunications market exists of a varied and ever-expanding array of platforms: WiMax, VOIP, Skype, Google Voice, etc.

Take Skype and Google Voice for example. Combined, they have more than 20 million users and many can communicate for free, avoiding the hassle of monthly plans and contracts. Similarly, facilities-based providers like MetroPCS also offer a la carte pricing plans, untethered from the bureaucracy of some larger national carriers, and any free app can connect users to VOIP technology. This is not the communications environment of the rotary phone and expensive long-distance calls.

These are among the many reasons why permitting either the Federal Communications Commission or the Department of Justice to dictate how the wireless world will develop over the next decade is a mistake that will harm, not help, consumers demanding more advanced mobile platforms. It is standard for FCC and DOJ to contemplate imposing conditions on even a successful merger. By what standard of competition will any such conditions be judged?

It is ironic that intervention in the merger is such a reflex among federal regulators. To some extent, this merger is driven by the scarcity of available bandwidth. What is the source of the scarcity? Federal inaction. The President has committed to freeing up more than 500 MHz of bandwidth. Yet the federal government still owns 61 percent of the most “useable” broadband, between 174 MHz and 4 GHz.

The scarcity of available spectrum means the U.S. needs to find a way to get more capacity from the spectrum that exists today. Because consumers won’t wait, and our economy can’t wait until more bandwidth is auctioned, the market drives a response. Enter AT&T and T-Mobile.

Competition, access, quality, and innovative wireless services. Those are the right criteria by which to judge mergers and acquisitions – not reliance on outmoded thinking and indices. A 21st Century communications world will require a sensible government policy foundation and billions of dollars in private investment. If consumers, shareholders, and the wireless market can benefit from this transaction, then there is little need for a prescriptive regulatory approach that won’t help consumers or our mobile infrastructure.